

EN BANC

[G.R. Nos. 237938 and 237944-45, December 04, 2018]

**BAYANI F. FERNANDO, PETITIONER, V. THE COMMISSION ON
AUDIT, RESPONDENT.**

D E C I S I O N

TIJAM, J.:

The audit jurisdiction of the Commission on Audit (COA) over the Executive Committee of the Metro Manila Film Festival (MMFF) is the subject matter of the instant controversy brought before Us in this Petition for *Certiorari*^[1] under Rule 64, in relation to Rule 65 of the Rules of Court. In this petition, petitioner seeks the reversal of the Fraud Audit Office Notice of Finality of Decision (FAO NFD) Nos. 2017-008 to 2017-10 all dated November 27, 2017 and Notices of Disallowance (ND) Nos. 2010-05-032 to 2010-05-034, all dated May 24, 2010 of the COA.

The Antecedents

Petitioner Bayani Fernando was the Chairman of the Executive Committee of MMFF from 2002-2008.^[2]

On August 17, 2009, the COA issued an Office Order No. 2009-602 authorizing the Fraud Audit and Investigation Office to conduct a special audit on the disbursements of the Executive Committee of the MMFF for the Calendar Years 2002-2008.^[3]

Through such investigation, the Fraud Audit and Investigation Office found that petitioner received the amount of P1,000,000.00 on May 20, 2003, and another P1,000,000.00 on May 30, 2003 from the Executive Committee of the MMFF for the Special Projects/Activities of the Metro Manila Development Authority (MMDA) sourced from the advertising sponsorship of the MMFF for 2002 and 2003. Also, the COA found that on March 15, 2005, petitioner received the amount of P1,000,000.00 from the Executive Committee of the MMFF as payment/release of funds for petitioner's cultural projects, which payment was sourced from non-tax revenues of the said Executive Committee of the MMFF.^[4]

Afterwards, the COA issued three Notices of Disallowance: ND No. 2010-05-032, ND No. 2010-05-033 and ND No. 2010-05-034 against petitioner covering the aforesaid amounts. In the NDs issued by COA, it made a common observation that:

The amount of P1,000,000.00 paid to Mr. Bayani F. Fernando by the Metro Manila Film Festival Executive Committee is disallowed in audit for the reason that **the check was encashed and was not issued an Official Receipt** by the Collecting officer of the MMDA. This constitutes irregular transaction as defined under COA Circular No. 85-55A for its (sic) violated the provision of Section 77 of the Government Accounting

and Auditing Manual (GAAM) Volume I which states that: "*Checks in payment for indebtedness to the government must be drawn by the payor himself and made payable to the agency or head or treasurer of agency. In the latter case, only the official title or designation of the official concerned shall be stated as the payee.*"

x x x x

Lastly, original copy of the aforementioned reference documents were not submitted as required by Section 168, Volume I, Government Accounting Rules and Regulations (GAAM).^[5] (Emphasis ours)

On February 27, 2018, petitioner received FAO NFD Nos. 2017-008 to 2017-010 all dated November 27, 2017, ordering him to pay a total amount of P3,000,000.00 representing the amounts disallowed by COA.

Aggrieved, petitioner comes before this Court, submitting that the COA committed grave abuse of discretion in disallowing the aforesaid amounts. Specifically, he submits that:

I

THE RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONDUCTING AN AUDIT OF THE FUNDS OF THE EXECUTIVE COMMITTEE OF THE METRO MANILA FILM FESTIVAL DESPITE A CLEAR SHOWING THAT THE COMMISSION ON AUDIT HAS NO JURISDICTION, AUTHORITY AND POWER TO AUDIT THE FUNDS OF AN ORGANIZATION THAT IS NOT A PUBLIC OFFICE.

II

THE RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE NOTICE OF DISALLOWANCE AND NOTICE OF FINALITY OF DECISION TO PETITIONER FERNANDO DESPITE A CLEAR SHOWING THAT THE FUNDS OF THE EXECUTIVE COMMITTEE OF THE MMFF SUBJECT OF THIS CASE AND AUDITED BY THE HONORABLE COMMISSION ON AUDIT ARE NOT PUBLIC FUNDS, HAVING BEEN SOURCED FROM NON-TAX REVENUES.^[6]

The Issue

As mentioned above, the issue in the instant case is whether the Executive Committee of the MMFF is subject to the COA's audit jurisdiction.^[7]

Petitioner contends that the COA has no jurisdiction over the Executive Committee of the MMFF, an organization composed of private individuals from the movie industry, and whose funds come from non-tax revenues and private donations. He claims that the Committee is neither a government-owned or controlled corporation, nor a government instrumentality or agency for it to be subject to COA's audit jurisdiction.^[8]

Meanwhile, respondent COA, in its Comment, argues that petitioner is not entitled to a Writ of *Certiorari* considering his failure to exhaust administrative remedies. COA

noted that petitioner did not appeal FAO NFD Nos. 2017-008 to 2017-010 before the COA Proper.^[9]

COA further contends that the Executive Committee of the MMFF is a government instrumentality created under Proclamation No. 1459^[10] dated July 9, 1975, performing a public purpose.^[11] It also argues that the committee's funds are public in nature considering the public purpose it serves, which is to provide fund assistance to film-related organizations "in recognition of the value and importance of the local movie industry in the over-all developmental effort for the country, a fitting celebration to encourage quality film production both in substance and in form, as well as provide incentives to the performing artists and the technicians in the industry." ^[12]

Petitioner, in his reply, argued that the case should not be remanded to COA because the government project has been contracted almost two decades ago, and to bring the case back to COA would greatly prejudice him.^[13] He also argues that the questions in the case at bar are purely legal questions which are within the expertise of this Court. ^[14]

Our Ruling

The petition lacks merit.

The audit jurisdiction of the Commission on Audit

Section 2, Article IX-D of the 1987 Constitution provides for the COA's audit jurisdiction:

SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the **revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity.** However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

The COA was envisioned by our Constitutional framers to be a dynamic, effective, efficient and independent watchdog of the Government.^[15] It granted the COA the authority to determine whether government entities comply with laws and

regulations in disbursing government funds, and to disallow illegal or irregular disbursements of government funds.^[16]

In the case of *Funa v. Manila Economic and Cultural Office, et al.*,^[17] this Court enumerated and clarified the COA's jurisdiction over various governmental entities. In that case, this Court stated that the COA's audit jurisdiction extends to the following entities:

1. The government, or any of its subdivisions, agencies and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; and
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.^[18]

COA's authority to examine and audit the accounts of government and, to a certain extent, non-governmental entities, is consistent with Section (Sec.) 29(1) of Presidential Decree (P.D.) No. 1445 otherwise known as the Auditing Code of the Philippines, which grants the COA visitorial authority over the following non-governmental entities:

1. Non-governmental entities "subsidized by the government";
2. Non-governmental entities "required to pay levy or government share";
3. Non-governmental entities that have "received counterpart funds from the government"; and
4. Non-governmental entities "partly funded by donations through the Government."^[19]

COA's audit jurisdiction is also laid down in Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987:

SECTION 11. *General Jurisdiction.*—(1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the

general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

x x x x.

As can be gleaned from the foregoing, the COA's audit jurisdiction generally covers public entities. However, its authority to audit extends even to non-governmental entities insofar as the latter receives financial aid from the government. Thus, it is clear that the determination of COA's jurisdiction over a specific entity does not merely require an examination of the nature of the entity. Should the entity be found to be non-governmental, further determination must be had as to the source of its funds or the nature of the account sought to be audited by the COA.

In the analysis of an entity's nature, this Court, in prior cases, examined the statutory origin, the charter, purpose and the relations that a particular entity has with the State.

In *Phil. Society for the Prevention of Cruelty to Animals v. Commission on Audit*,^[20] this Court clarified that totality of an entity's relations with the State must be considered. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private.^[21] This Court examined the charter of therein petitioner, Philippine Society for the Prevention of Cruelty to Animals, its employees' membership to social insurance system, and the presence of a government officials in its board, among others. In that case, this Court ruled that the mere public purpose of an entity's existence does not, *per se*, make it a public corporation:

Fourth. The respondents contend that the petitioner is a "body politic" because its primary purpose is to secure the protection and welfare of animals which, in turn, redounds to the public good.

This argument, is, at best, specious. The fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good. This class of corporations may be considered quasi-public corporations, which are private corporations that render public service, supply public wants or pursue other eleemosynary objectives. While purposely organized for the gain or benefit of its members, they are required by law to discharge functions for the public benefit. Examples of these corporations are utility, railroad, warehouse, telegraph, telephone, water supply corporations and transportation companies. It must be stressed that a quasi-public corporation is a species of private corporations, but the qualifying factor is the type of service the former renders to the public: if it performs a public service, then it becomes a quasi-public corporation.

Authorities are of the view that the purpose alone of the corporation cannot be taken as a safe guide, for the fact is that almost all corporations are nowadays created to promote the interest, good, or convenience of the public. A bank, for example, is a private corporation;